

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION

UNITED STATES OF AMERICA FOR  
THE USE AND BENEFIT OF A.H BECK  
FOUNDATION CO., INC.,  
*Complainant,*

v.

WESTFIELD INSURANCE COMPANY  
*Respondent.*

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Civil Action No. \_\_\_\_\_

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**ORIGINAL COMPLAINT**

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TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Complainant UNITED STATES OF AMERICA FOR THE USE AND BENEFIT OF A.H. BECK FOUNDATION CO., INC. (hereinafter referred to as "A.H. BECK"), and files its Original Complaint against Respondent WESTFIELD INSURANCE COMPANY ("WESTFIELD"). In support of this Complaint, A.H. BECK would respectfully show as follows:

**I. PARTIES**

1. Complainant A.H. BECK is a domestic corporation with its principal place of business located at 9014 Green Road, Converse, Texas 78109.

2. Respondent WESTFIELD is believed to be a foreign corporation licensed to conduct business in the State of Texas which can be served with citation through its registered agent, C T Corporation System, 1999 Bryan St, Suite 900, Dallas, Texas 75201-4284.

## **II. VENUE AND JURISDICTION**

3. Pursuant to the Miller Act, 40 U.S.C. § 3133, this Court has exclusive jurisdiction over this matter. Jurisdiction is further supported by 28 U.S.C. § 1331, as a Federal Question is involved. This is an action on a Miller Act Payment Bond for labor and material furnished for the improvement of a Federal construction project located in Eagle Pass, Maverick County, Texas.

4. Venue is mandatory in the Western District of Texas, Del Rio Division, pursuant to 40 U.S.C. § 3133(b)(3)(B) as this action constitutes a suit on a Miller Act Payment Bond issued by Respondent WESTFIELD for labor and material furnished by Complainant A.H. BECK for the improvement of a Federal construction project located in Eagle Pass, Maverick County, Texas.

## **III. BRIEF STATEMENT OF FACTS**

5. On or about January 26, 2021, Complainant A.H. BECK, as a first-tier subcontractor, entered into a written Subcontract Agreement (the “Subcontract”) with non-party Spencer Construction, LLC (“Spencer Construction”), as the prime contractor, for the construction of a bridge for the U.S. Customs and Border Protection Agency in Eagle Pass, Maverick County, Texas. The project made the basis of this Complaint is known as the Seco Creek Bridge Construction Project (the “Project”), Contract No. 70B01C20C00000152. More specifically, Complainant A.H. BECK was engaged by Spencer Construction to drill 48” shafts some 264 linear feet into the underlying bedrock beneath the Project to support the bridge structures, with such drilling being conducted on an expedited basis because Spencer Construction’s prior drilling subcontractor defaulted in its work and was terminated.

6. Respondent WESTFIELD is the surety engaged by Spencer Construction to issue Payment Bond for the use and benefit of subcontractors and suppliers like Complainant A.H. BECK who performed work and provided labor on the Project for which they have not been paid. The Payment Bond made the basis of this Complaint is Respondent WESTFIELD's Bond No. 090194T (the "Payment Bond" or "Bond").

7. Complainant A.H. BECK fully, timely and properly completed its drilling work on the Project in March of 2021, yet, despite repeated demands for payment and the perfection of its Miller Act claim against the Project's Payment Bond, \$105,600.00 remains past-due and owing to A.H. BECK for its work on the Seco Bridge Project, excluding interest on the debt and attorneys' fees (the "Debt").

#### **IV. BOND CLAIM**

8. Complainant A.H. BECK asserts a Miller Act bond claim pursuant to 40 U.S.C. § 3131 et. seq. against Respondent WESTFIELD.

9. Complainant A.H. BECK has a direct contractual relationship with Spencer Construction such that no notice was required. However, even in the alternative, were there no such direct contractual relationship, Complainant A.H. BECK provided timely notice to Spencer Construction and Respondent WESTFIELD with regard to A.H. BECKS' bond claim. Accordingly, Complainant A.H. BECK perfected its bond claim.

10. Despite Complainant A.H. BECK's timely notices and request for payment of its bond claim, Respondent WESTFIELD has failed and refused, and continues to fail and refuse, to honor its statutory and contractual obligations under the Payment Bond.

11. This lawsuit is being brought no later than one (1) year after the date on which the last of the labor was performed or material was supplied by Complainant A.H. BECK. See 40 U.S.C. § 3133(b)(4).

12. Complainant A.H. BECK has conducted and completed all conditions precedent to pursuing this Miller Act bond claim and lawsuit. Complainant A.H. BECK seeks a minimum of \$105,600.00 as damages from Respondent WESTFIELD in relation to the unpaid work and labor it furnished to the Project.

#### **V. ATTORNEYS' FEES**

13. Pursuant to equitable principles, Complainant A.H. BECK seeks recovery (to the extent it is entitled), of its attorney's fees, litigation costs and court costs, incurred as a result of enforcing the Miller Act bond claim. Complainant A.H. BECK's Subcontract with Spencer Construction provides for the recovery of attorney's fees by the prevailing party.

#### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Complainant, United States of America for the Use and Benefit of A.H. Beck Foundation, Co., Inc., prays that this Court find in its favor on all issues, award all damages sought, award reasonable and necessary attorney's fees, costs of court, pre-and post-judgment interest at the highest rates allowed by law, and for such other and further relief as Complainant, United States of America for the Use and Benefit of A.H. Beck Foundation, Co., Inc., may be justly entitled.

Respectfully submitted,

**McNELIS + ASSOCIATES, PLLC**

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**ATTORNEYS FOR COMPLAINANT**